

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

|   |   |                            |
|---|---|----------------------------|
| In re ENRON CORPORATION                     | } |                            |
| SECURITIES, DERIVATIVE &                    | } | MDL 1446                   |
| “ERISA” LITIGATION                          | } |                            |
|   | } |                            |
| _____                                       | } |                            |
| This Document Relates To:                   | } |                            |
|   | } |                            |
| MARK NEWBY, et al., individually and        | } | Civil Action No. H-01-3624 |
| on behalf of all others similarly situated, | } |                            |
| Plaintiffs                                  | } | (Consolidated)             |
|   | } |                            |
| VS.   | } |                            |
|   | } |                            |
| ENRON CORP., <i>et al.</i>                  | } |                            |
| Defendants                                  | } |                            |
|   | } |                            |
| _____                                       | } |                            |
| THE REGENTS OF THE UNIVERSITY               | } |                            |
| OF CALIFORNIA, et al., individually and     | } |                            |
| on behalf of all others similarly situated, | } |                            |
| Plaintiffs,                                 | } |                            |
|   | } |                            |
| VS.   | } | Civil Action No. H-02-3401 |
|   | } |                            |
| KENNETH L. LAY, <i>et al.</i> ,             | } |                            |
| Defendants                                  | } |                            |
|   | } |                            |
| _____                                       | } |                            |
| WASHINGTON STATE INVESTMENT                 | } |                            |
| BOARD, et al., individually and on behalf   | } |                            |
| of all others similarly situated,           | } |                            |
| Plaintiffs,                                 | } |                            |
|   | } | Civil Action No. H-02-3401 |
| VS.   | } |                            |
|   | } |                            |
| KENNETH L. LAY, <i>et al.</i> ,             | } |                            |
| Defendants                                  | } |                            |
| _____                                       | } |                            |

|  |   |                            |
|--|---|----------------------------|
| CONSECO ANNUITY ASSURANCE              | } |                            |
| COMPANY, individually and on behalf of | } |                            |
| all others similarly situated,         | } |                            |
| Plaintiffs                             | } |                            |
|  | } |                            |
| VS.                                    | } | Civil Action No. H-02-2240 |
|  | } |                            |
| CITIGROUP, INC., <i>et al.</i> ,       | } |                            |
| Defendants                             | } |                            |
|  | } |                            |
| SILVERCREEK MANAGEMENT INC.,           | } |                            |
| <i>et al.</i> ,                        | } |                            |
| Plaintiffs                             | } |                            |
|  | } |                            |
| VS.                                    | } | Civil Action No. H-02-3185 |
|  | } |                            |
| SALOMON SMITH BARNEY, <i>et al.</i> ,  | } |                            |
| Defendants.                            | } |                            |
|  | } |                            |
| SILVERCREEK MANAGEMENT INC.,           | } |                            |
| <i>et al.</i> ,                        | } |                            |
| Plaintiffs                             | } |                            |
|  | } |                            |
| VS.                                    | } | Civil Action No. H-03-0815 |
|  | } |                            |
| CITIGROUP, INC., <i>et al.</i> ,       | } |                            |
| Defendants                             | } |                            |
|  | } |                            |

**ORDER ON OPPOSED MOTION TO PERMIT SILVERCREEK PLAINTIFFS TO OPT OUT OF CITIGROUP AND JP MORGAN SETTLEMENTS AND TO REMAIN IN CIBC SETTLEMENT CLASS**

(Newby Instrument No. 4574; Silvercreek H-02-3185, Instrument No. 77; Silvercreek H-03-0815, Instrument No. 28)

Plaintiffs Silvercreek Management Inc., Silvercreek Limited Partnership, Silvercreek II Limited, OIP Limited, and Pebble Limited Partnership (“Silvercreek Plaintiffs”) have filed a

motion to permit them to opt out of the class settlements with Citigroup<sup>1</sup> and JP Morgan Chase<sup>2</sup>, but to remain in the class settlement with CIBC.<sup>3</sup> The motion asks merely that they be allowed to continue to remain in the class that is settling with CIBC. They argue that if they are forced to opt out of the CIBC settlement class, they will be obliged to file a separate case against CIBC in order to pursue their claims, which would be wasteful.

The settling defendants, JP Morgan Chase and Citigroup are opposed to the Silvercreek Plaintiffs' opting out of the JPMorgan class and the Citigroup class, but remaining in the CIBC class. They argue that to allow the Silvercreek Plaintiffs to cherry pick the class in which they wish to stay constitutes a rewriting of the settling parties' agreement in contravention of Rule 23 of the Federal Rules of Civil Procedure, which "expressly contemplates that class members will ordinarily be given a single opportunity at an early stage of the class action to decide whether or not to participate in the action, and that, as the courts have repeatedly recognized, a class member that opts out of the litigation does so for all purposes." Opposition of Citigroup, *et al.*, Newby Instrument No. 4583, at 2. To allow otherwise would upset "the balance struck by Rule 23" to protect a class member's rights and to promote the efficient resolution of class actions. *In re Del-Val Fin. Corp. Securities Litigation*, 162 F.R.D. 271, 275 (S.D.N.Y. 1995). The Court agrees. Accordingly,

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<sup>1</sup>Citigroup Inc., Citibank, N.A., Citicorp, Citigroup Global Markets Inc., Citigroup Global Markets Limited, and Schroder Salomon Smith Barney.

<sup>2</sup>JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., J.P. Morgan Securities Inc.

<sup>3</sup>Canadian Imperial Bank of Commerce, CIBC World Markets Corp. (F/K/A CIBC Oppenheimer Corp.) and CIBC World Markets plc.

It is hereby ORDERED that the Opposed Motion to Permit Silvercreek Plaintiffs to Opt Out of Citigroup and JP Morgan Settlements and to Remain in CIBC Settlement Class (Instrument No. 4574) is hereby DENIED.

SIGNED at Houston, Texas, this 12<sup>th</sup> day of April, 2006.

  
MELINDA HARMON  
UNITED STATES DISTRICT JUDGE